People and Health

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The freedom to condemn tobacco advertising

Following the publication of a booklet by two Swedish government bodies and an international nongovernmental organization, in which tobacco advertising techniques were strongly criticized, Sweden’s Tobacco Trade Association lodged a complaint with the country’s Parliamentary Ombudsman. The Ombudsman, rejecting the main part of the Association’s case, ruled that the government authorities had a constitutional right to express opinions on tobacco advertising and that these could hardly be expected to be neutral or free from challenging statements.

In March 1989, Sweden’s National Board for Consumer Policies and National Board of Health and Welfare joined forces with the International Organization of Consumers’ Unions, a nongovernmental body, to publish a 48-page booklet called Smart promotion in Swedish and English as a teaching aid to stimulate discussion and debate. The booklet shows, in colourful scrapbook style, how tobacco companies manage to keep their advertising one step ahead of national legislation. Smart promotion also challenges the industry’s claim that it does not direct its advertising at young people, by showing advertisements from countries where tobacco advertising is still virtually unrestricted.

The tobacco industry sees red

Smart promotion was much appreciated by health-orientated groups. WHO awarded the publication its gold medal for “achievement worthy of international recognition in promoting the concept of tobacco-free societies”.

But, of course, not everyone was happy. Indeed, the tobacco companies were greatly disturbed. Sweden’s Tobacco Trade Association referred the publication to the Parliamentary Ombudsman, a judicial officer.
dealing mainly with complaints against government authorities or civil servants in respect of constitutional or other matters.

The Association argued that the government bodies concerned in producing Smart promotion had gone far beyond their legitimate functions. The authorities were said to have wrongly accused the companies of criminal activities, yet all the advertisements shown in the booklet were perfectly legal. The Association said that hidden tobacco advertising did not exist and that it was perfectly legal to use a certain trademark on many different products simultaneously. The sponsorship of sports by tobacco firms was claimed to be legal in the countries where it was practised. The authorities had not informed readers of the booklet about the restrictions on tobacco advertising in Sweden. The Swedish constitution obliged government authorities to show impartiality and factual objectivity in their work. It could therefore not be the task of these authorities to take a stand against tobacco advertising or to campaign against the legal activities of tobacco companies.

The companies further complained that one of the directors of a cigarette firm in Sweden had been wrongly quoted in the booklet, identified by name and photograph and accused of working on hidden advertising. Tactics for combating tobacco advertising, allegedly advocated and described in the booklet, were represented by the Association as an attempt to induce Swedish children to behave in a disorderly manner and to deface private property.

The Association subsequently made accusations against the present authors, officials of the National Board of Health and Welfare, who had assisted in producing Smart promotion. They were accused of not having observed the rules of impartiality and factual objectivity, not only in connection with Smart promotion but also when talking to the media, at international conferences, when writing articles, and so on. The officials were said to be members of an illegal international conspiracy that had been formed at the Sixth World Conference on Smoking and Health in Tokyo in 1987 with the aim of defaming the tobacco industry by illegal methods and throwing mud at the industry’s employees.

These accusations were also made in a letter to the Swedish Minister of Health and Social Affairs from the President and Chief Executive Officer of the state-owned Swedish Tobacco Group during the summer of 1989.

The authorities stand firm

The government authorities answered the accusations by pointing out that the rules of impartiality and factual objectivity applied above all else to the manner in which the authorities should behave towards individuals. The main obligations of government authorities concerned the individual citizen, whose personal welfare had to be promoted by the state. The Swedish authorities were not obliged to remain impartial or neutral in respect of actions or ideas that threatened the welfare of the individual. It was therefore correct for the National Board of Health and
Welfare to take a stand against the promotion of unhealthy products if this was done on a factual basis, even when the products were legal. Likewise, it was right for the National Board for Consumer Policies to inform the public, especially children, about how advertising worked, what methods, tactics and messages were used, and so on, and to adopt a position favouring consumers’ rights even if this conflicted with the interests of producers. The Swedish Parliament has stated that government health education should focus not only on the individual but also on social and environmental factors affecting health.

The National Board of Health and Welfare pointed out that civil servants have the same right of free speech as other citizens. It also testified that their statements were in accordance with the Board’s policy concerning tobacco control.

The National Board for Consumer Policies, however, did decide on some minor changes in the booklet. It was felt that a cover photograph taken from an advertisement might be regarded as too eye-catching for a critical study on advertising. It might also be questioned whether the Board had the right to use the photograph without the consent of the photographer or the tobacco company. In order to avoid lengthy discussion of the matter, the Board decided to remove the photograph. The cover of the booklet is now black with the title, a picture of the WHO award and a short piece of text.

**Verdict**

The Ombudsman’s verdict, delivered in November 1989, was that government authorities have a constitutional right to express opinions on tobacco advertising and to contribute to the debate about it, and that what they said could hardly be expected to be neutral or free from challenging statements. He also felt, however, that Swedish tobacco advertising restrictions and the illegality of graffiti should have been mentioned and that the director of a cigarette firm should not have been identified. The two officials from the Board of Health and Welfare were found not guilty.

Some minor changes have been made in the booklet, following the verdict. *Smart promotion* is available from the Board for Consumer Policies, Box 503, S-162 15 Vällingby, Sweden.